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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/161,816	09/28/1998	MALCOM B. STRANDBERG	DAVOX-142XX	8075

28452 7590 02/11/2004
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MANCHESTER, NH 03104

EXAMINER

AGDEPPA, HECTOR A

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 02/11/2004

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/161,816

Applicant(s)

STRANDBERG, MALCOM B.

Examiner

Hector A. Agdeppa

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/24/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-23 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-23 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 4 – 11, 21 – 23, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat 5,884,032 (Bateman et al.) in view of US Pat 4,052,570 (Sutton).

Bateman et al. teaches a method and system for coordinating communications via customer contact channel changing system, using a call center for setting up the call between the customer and an available help agent from a pool of agents, wherein a call back is provided from a request over a data path 6 from a data terminal 4, the call back data including a telephone number to be dialed. (Col. 4, line 51 – Col. 5, line 12 and Col. 6, lines 14 – 19) Furthermore, Bateman et al. teaches a server 28 for receiving requests and forwarding call back data to a remotely located outbound dialer system 32 having a HOTLIST wherefrom telephone numbers to be dialed may be retrieved and processed. (Col. 5, lines 35 – 67 and Col. 6, lines 41 – 50)

Bateman et al. also teaches the aforementioned data path being one or a combination of a direct data path, a LAN or WAN, and/or the PSTN. (Fig. 1)

Bateman et al. teaches that the call back request includes customer indicia, a time to call back, and a message, wherein the message may be comprised of voice and/or text and/or DTMF tones. (Col. 6, line 1 – Col. 7, line 13) Note that Bateman et al.

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teaches the use an IVR (interactive voice response) system and it is inherent that in an IVR system a customer may respond by pressing buttons on a conventional telephone i.e. DTMF tones or even when a customer may respond via voice, the voice is converted into DTMF tones for processing by the IVR system.

Bateman et al. further teaches a MMM 50 acting as a call scheduler responsive to the aforementioned HOTLIST for ordering and scheduling the telephone numbers to be dialed at approximately the time designated or scheduled to be called back or even immediately. (Col. 7, lines 28 – 61) Furthermore, depending on the data connection type the customer has, an immediate connection may be made with an available agent over a network with the use of ISDN or SVD, so as to allow for the simultaneous exchange of voice and data and waiting for, for example, a customer to disconnect from a dial-up ISP to allow access to a conventional phone line. (Col. 10, lines 25 – 31)

Bateman et al. also teaches the use of CGI programs. (Col. 5, lines 56 – 60 and Col. 7, lines 28 – 42)

Lastly, Bateman et al. also teaches a "substantially immediate" callback in another embodiment wherein a customer may desire for example, "Live Help" instead of a scheduled callback at a later time. (Col. 6, lines 14 – 29)

Moreover, as seen in Fig. 8, the customer premises shows a telephone 120 and a computer 124, wherein the computer may be connected via modem 126 to the only telephone network taught, the PSTN 116, which is the same telephone network that telephone 120 is connected to. Also, note that the agent will be calling the customer premises over that very same PSTN telephone network.

What Bateman et al. does not teach is the callback being repetitive when encountering a busy signal.

However, Sutton teaches an extremely old and well-known feature of telephony systems which is the continuous redialing of a telephone number in the event that a busy signal is encountered.

Because continuous redialing is such an old and well-known feature, it would simply be an obvious design choice or preferred mode of operation that one skilled in the art would employ in the invention of Bateman et al. If a business encounters a busy or no-answer when calling a customer, there is motivation to keep re-trying/redialing that customer in order to get that customer's business. It would not be good business-sense to merely give up after unsuccessfully attempting to reach a customer only one time.

Regarding claim 21, Bateman et al. teaches the use of Internet services with multiple media formats and it is well known to use JAVA over the Internet. Therefore it would be an obvious design choice by one skilled in the art whether to use CGI or JAVA so as to allow for the transmission of the call back data over the Internet.

2. Claims 12 – 20, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat 5,884,032 (Bateman et al.) in view of US Pat 4,052,570 (Sutton) and further in view of US Pat 5,214,688 (Szlam et al.)

Bateman et al. and Sutton have been discussed above. What Bateman et al. and Sutton do not teach is a predictive dialer, wherein the predictive dialer has a call

pacers. Furthermore, Bateman et al. does not teach appending a non-answered call to a future call campaign.

However, Szlam et al. teaches a method and apparatus for dynamic and interdependent processing of inbound calls and outbound calls, wherein a pacing, predictive dialer is used (Fig. 4 and Col. 11, line 50 – Col. 12, line 7) as well as assigning a call to a next campaign (Col. 9, lines 5 – 8)

It would have been obvious to include the aforementioned features of Szlam et al. in the combination of Bateman et al. and Sutton so as to allow for the dynamic adjustment of call completion in response to various call scenarios and situations as noted in Columns 2 and 3 of Szlam et al.

Response to Arguments

3. Applicant's arguments filed 11/24/03 have been fully considered but they are not persuasive.

Examiner acknowledges applicant's arguments. However, while Fig. 8 of Bateman et al. shows computer 124 being connected to 2 modems, 122 and 126, examiner is certain that such an embodiment merely shows the option of having the computer and telephone 120 connected over the same line, hence the use of modem 122 which telephone 120 is also connected to, and the other option of having another dedicated line (analog telephone line) that the computer may dial up to the internet via modem 126.

Inasmuch as the Bateman reference was filed in 1995, even though Bateman teaches other embodiments showing data and telephony existing on the same line, for example, it had to have been contemplated, as described above, that a user might have only 1 line connecting him/her to the internet via a dial-up modem and connecting him/her to the PSTN via a standard telephone. Even in 2004, it is still not uncommon for someone to have only 1 standard telephony line and having a telephone and computer connected thereto. Therefore, in ANY circumstance, whether in receiving a call-back from a call center or simply receiving a regular telephony call, if that person is connected to the internet via a dial-up modem, that connection must first be disconnected before they may receive an incoming telephone call.

As to the continuous redial aspect of the present invention, even a method wherein a number is continuously redialed after every busy signal is obvious though not employed often because such would merely be a waste of resources in the majority of cases, if not all of them. If for example, a person does not have voice mail or an answering machine, continuously redialing that number would mean that the system would be attempting a call possibly for hours and hours until someone at the called number picks up. Many more methods of call back have been developed wherein a callback will be made only when the line to be called is monitored and is determined not to be busy for example. However, this does not affect the motivation for why such a feature would be implemented in a newer or more modern system, as again, it is simply a well-known method of dialing.

Also, as claimed, the telephone and computer are connected to "a telephone network" NOT to a single telephone line as argued on p. 12, of applicant's remarks.

As to applicant's arguments regarding the obviousness of combining the Sutton and Bateman references, Examiner maintains the previous rejection given in the office action filed 5/19/03. In that office action and in the previous advisory action filed 9/10/03, Examiner explained the reasoning for the rejection and again refers applicant the following case law.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves **or in the knowledge generally available to one of ordinary skill in the art**. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In addition, a suggestion/motivation **need not be expressly stated** in one or all of the references used to show obviousness. *Cable Electric Products, Inc. V. Genmark, Inc.*, 770 F.2d 1015, 1025, 226 USPQ 881, 886 (Fed. Cir. 1985); *In re Sheckler*, 438 F.2d 999, 1001, 168 USPQ 716, 717 (CCPA 1971). It is assumed that every reference relies to some extent on the knowledge of persons skilled in the art to complement that which is disclosed therein. Further, the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In other words, **the person having ordinary skill in the art has a level of knowledge apart**

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from the content of the references. *In re Bode*, 550 F.2d 656, 660, 193 USPQ 12, 16 (CCPA 1977); *In re Jacoby*, 309 F.2d 513,516, 135 USPQ 317, 319 (CCPA 1969)

This relates to suggestion/motivation in that "having established that this knowledge was in the art, the Examiner could then properly rely ... on a conclusion of obviousness 'from **common knowledge and common sense** of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference'." *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545,549 (CCPA 1969)

If a telephony feature was conceived and patented in 1977, it is considered old and well known in the telephony arts. If something is considered old and well known in the telephony arts and moreover, is merely a well known variation of a well known feature such as a repetitive dialing in call backs, examiner's reasoning for obviousness would suffice under any of the above-mentioned case law. Clearly, as seen by the Sutton reference, call-backs were perhaps not originally conceived as being implemented in call centers, but as Bateman shows, the call-back feature was merely a well known telephony feature that those inventors decided to implement in their invention.

Applicant in the interview conducted 1/7/04, also discussed at the time of filing, repetitive dialing during call-back was perhaps not commonly done due to certain regulations. However, no such discussion is made in the specification, nor is such a feature/advancement recited in the claims. Also, repetitive dialing again, is merely one method of performing call-backs. Some systems will monitor a line to wait until it is free to attempt a call-back and some "bang-away" on the line repeatedly, making call-back

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attempts. Choosing one method over the other is only a preference for whatever reasons that choice is made and does not equate patentably.


Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hector A. Agdeppa whose telephone number is 703-305-1844. The examiner can normally be reached on Mon thru Fri 9:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad F. Matar can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

H.A.A.
January 27, 2004


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